

Public Law 102-558
102d Congress

An Act

Oct. 28, 1992
[S. 347]

Defense
Production Act
Amendments
of 1992.
50 USC app.
2061 note.

To amend the Defense Production Act of 1950 to revitalize the defense industrial base of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Defense Production Act Amendments of 1992”.

(b) **TABLE OF CONTENTS.**—

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TITLE I—AMENDMENTS TO THE DEFENSE PRODUCTION ACT OF 1950

PART A—DECLARATION OF POLICY

SEC. 101. DECLARATION OF POLICY.

Section 2 of the Defense Production Act of 1950 (50 U.S.C. App. 2062) is amended to read as follows:

"SEC. 2. DECLARATION OF POLICY.

"(a) FINDINGS.—The Congress finds that—

"(1) the vitality of the industrial and technology base of the United States is a foundation of national security that provides the industrial and technological capabilities employed to meet national defense requirements, in peacetime and in time of national emergency;

"(2) in peacetime, the health of the industrial and technological base contributes to the technological superiority of United States defense equipment, which is a cornerstone of the national security strategy, and the efficiency with which defense equipment is developed and produced;

"(3) in times of crisis, a healthy industrial base will be able to effectively provide the graduated response needed to effectively meet the demands of the emergency;

"(4) in view of continuing international problems, the Nation's demonstrated reliance on imports of materials and components, and the need for measures to reduce defense production lead times and bottlenecks, and in order to provide for the national defense and national security, the United States defense mobilization preparedness effort continues to require the development of—

"(A) preparedness programs;

"(B) domestic defense industrial base improvement measures;

"(C) provisions for a graduated response to any threatening international or military situation;

"(D) the expansion of domestic productive capacity beyond the levels needed to meet the civilian demand; and

"(E) some diversion of certain materials and facilities from civilian use to military and related purposes.

"(5) to meet the requirements referred to in this subsection, this Act affords to the President an array of authorities to shape defense preparedness programs and to take appropriate steps to maintain and enhance the defense industrial and technological base;

"(6) the activities referred to in this subsection are needed in order to—

“(A) improve domestic defense industrial base efficiency and responsiveness;

“(B) reduce the time required for industrial mobilization in the event of an attack on the United States; or

“(C) to respond to actions occurring outside of the United States which could result in the termination or reduction of the availability of strategic and critical materials, including energy, and which could adversely affect the national defense preparedness of the United States;

“(7) in order to ensure national defense preparedness, which is essential to national security, it is necessary and appropriate to assure the availability of domestic energy supplies for national defense needs;

“(8) to further assure the adequate maintenance of the defense industrial base, to the maximum extent possible, such supplies should be augmented through reliance on renewable fuels, including solar, geothermal, and wind energy and ethanol and its derivatives, and on energy conservation measures;

“(9) the domestic defense industrial base is a component part of the core industrial capacity of the Nation;

“(10) much of the industrial capacity which is relied upon by the Federal Government for military production and other defense-related purposes is deeply and directly influenced by—

“(A) the overall competitiveness of the United States industrial economy; and

“(B) the ability of United States industry, in general, to produce internationally competitive products and operate profitably while maintaining adequate research and development to preserve that competitive edge in the future, with respect to military and civilian production;

“(11) the domestic defense industrial base is developing a growing dependency on foreign sources for critical components and materials used in manufacturing and assembling major weapons systems for the national defense;

“(12) such dependence is threatening the capability of many critical industries to respond rapidly to defense production needs in the event of war or other hostilities or diplomatic confrontation; and

“(13) the inability of United States industry, especially smaller subcontractors and suppliers, to provide vital parts and components and other materials would impair our ability to sustain United States Armed Forces in combat for longer than a short period.

“(b) STATEMENT OF POLICY.—It is the policy of the United States that—

“(1) in order to ensure productive capacity in the event of an attack on the United States, the United States should encourage the geographic dispersal of industrial facilities in the United States to discourage the concentration of such productive facilities within limited geographic areas which are vulnerable to attack by an enemy of the United States;

“(2) to ensure that essential mobilization requirements are met, consideration should also be given to stockpiling strategic materials to the extent that such stockpiling is economical and feasible;

“(3) in the construction of any Government-owned industrial facility, in the rendition of any Government financial

assistance for the construction, expansion, or improvement of any industrial facility, and in the production of goods and services, under this or any other Act, each department and agency of the executive branch should apply, under the coordination of the Federal Emergency Management Agency, when practicable and consistent with existing law and the desirability for maintaining a sound economy, the principle of the geographic dispersal of such facilities in the interest of national defense, except that nothing in this paragraph shall preclude the use of existing industrial facilities;

“(4) to ensure the adequacy of productive capacity and supply, executive agencies and departments responsible for defense acquisition should continuously assess the capability of the domestic defense industrial base to satisfy peacetime requirements as well as increased mobilization production requirements, specifically evaluating the availability of adequate production sources, including subcontractors and suppliers, materials, skilled labor, and professional and technical personnel;

“(5) every effort should be made to foster cooperation between the defense and commercial sectors for research and development and for acquisition of materials, components, and equipment; and

“(6) plans and programs to carry out this section shall be undertaken with due consideration for promoting efficiency and competition.”

PART B—AMENDMENTS TO TITLE I OF THE DEFENSE PRODUCTION ACT

SEC. 111. STRENGTHENING OF DOMESTIC CAPABILITY AND ASSISTANCE FOR SMALL BUSINESSES.

Title I of the Defense Production Act of 1950 (50 U.S.C. App. 2071, et seq.) is amended by adding at the end the following new sections:

“SEC. 107. STRENGTHENING DOMESTIC CAPABILITY.

50 USC app.
2077.

“(a) **IN GENERAL.**—Utilizing the authority of title III of this Act or any other provision of law, the President may provide appropriate incentives to develop, maintain, modernize, and expand the productive capacities of domestic sources for critical components, critical technology items, and industrial resources essential for the execution of the national security strategy of the United States.

“(b) **CRITICAL COMPONENTS AND CRITICAL TECHNOLOGY ITEMS.**—

“(1) **IDENTIFICATION.**—

“(A) **IN GENERAL.**—The President, acting through the Secretary of Defense, shall identify critical components and critical technology items for each item on the Critical Items List of the Commanders-in-Chief of the Unified and Specified Commands and other items within the inventory of weapon systems and defense equipment.

President.

“(B) **DEFINITION.**—Any component identified as critical by a National Security Assessment conducted pursuant to section 113(i) of title 10, United States Code, or by a Presidential determination as a result of a petition filed under section 232 of the Trade Expansion Act of 1962 shall be designated as a critical component for purposes

President.

of this Act, unless the President determines that the designation is unwarranted.

“(2) MAINTENANCE OF RELIABLE SOURCES OF SUPPLY.—The President shall take appropriate actions to assure that critical components or critical technology items are available from reliable sources when needed to meet defense requirements during peacetime, graduated mobilization, and national emergency.

“(3) APPROPRIATE ACTION.—For purposes of this subsection, appropriate action may include—

“(A) restricting contract solicitations to reliable sources;

“(B) restricting contract solicitations to domestic sources pursuant to—

“(i) section 2304(b)(1)(B) or section 2304(c)(3) of title 10, United States Code;

“(ii) section 303(b)(1)(B) or section 303(c)(3) of the Federal Property and Administrative Services Act of 1949; or

“(iii) other statutory authority;

“(C) stockpiling critical components; and

“(D) developing substitutes for a critical component or a critical technology item.

50 USC app.
2078.

President.

“SEC. 108. MODERNIZATION OF SMALL BUSINESS SUPPLIERS.

“(a) IN GENERAL.—In providing any assistance under this Act, the President shall accord a strong preference for small business concerns which are subcontractors or suppliers, and, to the maximum extent practicable, to such small business concerns located in areas of high unemployment or areas that have demonstrated a continuing pattern of economic decline, as identified by the Secretary of Labor.

“(b) MODERNIZATION OF EQUIPMENT.—

“(1) IN GENERAL.—Funds authorized under title III may be used to guarantee the purchase or lease of advance manufacturing equipment, and any related services with respect to any such equipment for purposes of this Act.

“(2) SMALL BUSINESS SUPPLIERS.—In considering proposals for title III projects under paragraph (1), the President shall provide a strong preference for proposals submitted by a small business supplier or subcontractor whose proposal—

“(A) has the support of the department or agency which will provide the guarantee;

“(B) reflects that the small business concern has made arrangements to obtain qualified outside assistance to support the effective utilization of the advanced manufacturing equipment being proposed for installation; and

“(C) meets the requirements of section 301, 302, or 303.”.

SEC. 112. LIMITATION ON ACTIONS WITHOUT CONGRESSIONAL AUTHORIZATION.

Section 104 of the Defense Production Act of 1950 (50 U.S.C. App. 2074) is amended to read as follows:

“SEC. 104. LIMITATION ON ACTIONS WITHOUT CONGRESSIONAL AUTHORIZATION.

“(a) WAGE OR PRICE CONTROLS.—No provision of this Act shall be interpreted as providing for the imposition of wage or price

controls without the prior authorization of such action by a joint resolution of Congress.

“(b) CHEMICAL OR BIOLOGICAL WEAPONS.—No provision of title I of this Act shall be exercised or interpreted to require action or compliance by any private person to assist in any way in the production of or other involvement in chemical or biological warfare capabilities, unless authorized by the President (or the President’s designee who is serving in a position at level I of the Executive Schedule in accordance with section 5312 of title 5, United States Code) without further redelegation.”.

PART C—AMENDMENTS TO TITLE III OF THE DEFENSE PRODUCTION ACT

SEC. 121. EXPANDING THE REACH OF EXISTING AUTHORITIES UNDER TITLE III.

(a) GUARANTEE AUTHORITY.—Section 301 of the Defense Production Act of 1950 (50 U.S.C. App. 2091) is amended—

(1) in subsection (a)(1), by striking “to expedite production and deliveries or services under Government contracts for the procurement of materials or the performance of services for the national defense” and inserting “to expedite or expand production and deliveries or services under Government contracts for the procurement of industrial resources or critical technology items essential to the national defense”;

(2) by amending subsection (a)(3)(A) to read as follows:

“(A) the guaranteed contract or activity is for industrial resources or a critical technology item which is essential to the national defense.”;

(3) in subsection (a)(3)(B)—

(A) by striking “Without” and inserting “without”; and

(B) by striking “the capability for the needed material or service” and inserting “the needed industrial resources or critical technology item”;

(4) by amending subsection (a)(3)(D) to read as follows:

“(D) the combination of the United States national defense demand and foreseeable nondefense demand is not less than the output of domestic industrial capability, as determined by the President, including the output to be established through the guarantee.”;

(5) in subsection (e)(1)(A), by striking “Except during periods of national emergency declared by the Congress or the President” and inserting “Except as provided in subparagraph (D)”;

(6) in subsection (e)(1)(C), by striking “\$25,000,000” and inserting “\$50,000,000”; and

(7) subsection (e)(1), by adding at the end the following new subparagraph:

“(D) The requirements of subparagraphs (A), (B), and (C) may be waived—

“(i) during periods of national emergency declared by the Congress or the President; or

“(ii) upon a determination by the President, on a nondelegable basis, that a specific guarantee is necessary to avert an industrial resource or critical technology shortfall that would severely impair national defense capability.”.

(b) **LOANS TO PRIVATE BUSINESS ENTERPRISES.**—Section 302 of the Defense Production Act of 1950 (50 U.S.C. App. 2092) is amended—

(1) in subsection (a), by striking “for the procurement of materials or the performance of services for the national defense” and inserting “for the procurement of industrial resources or a critical technology item for the national defense”;

(2) by amending subsection (b)(2)(D) to read as follows:

“(D) the combination of the United States national defense demand and foreseeable nondefense demand is not less than the output of domestic industrial capability, as determined by the President, including the output to be established through the loan.”;

(3) in subsection (c)(1), by striking “No such loan may be made under this section, except during periods of national emergency declared by the Congress or the President” and inserting “Except as provided in paragraph (4), no loans may be made under this section”;

(4) in subsection (c)(3), by striking “\$25,000,000” and inserting “\$50,000,000”; or

(5) in subsection (c), by adding at the end the following new paragraph:

“(4) The requirements of paragraphs (1), (2), and (3) may be waived—

“(A) during periods of national emergency declared by the Congress or the President; and

“(B) upon a determination by the President, on a nondelegable basis, that a specific guarantee is necessary to avert an industrial resource or critical technology shortfall that would severely impair national defense capability.”.

(c) **PURCHASES AND PURCHASE COMMITMENTS.**—

(1) **IN GENERAL.**—Section 303(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2093(a)) is amended to read as follows:

“(a) **PRESIDENTIAL PROVISIONS.**—

“(1) **IN GENERAL.**—To assist in carrying out the objectives of this Act, the President may make provision—

“(A) for purchases of or commitments to purchase an industrial resource or a critical technology item, for Government use or resale; and

“(B) for the encouragement of exploration, development, and mining of critical and strategic materials, and other materials.

“(2) **TREATMENT OF CERTAIN AGRICULTURAL COMMODITIES.**—Purchases for resale under this subsection shall not include that part of the supply of an agricultural commodity which is domestically produced, except to the extent that such domestically produced supply may be purchased for resale for industrial use or stockpiling.

“(3) **TERMS OF SALES.**—No commodity purchased under this subsection shall be sold at less than—

“(A) the established ceiling price for such commodity, except that minerals, metals, and materials shall not be sold at less than the established ceiling price, or the current domestic market price, whichever is lower; or

“(B) if no ceiling price has been established, the higher of—

“(i) the current domestic market price for such commodity; or

“(ii) the minimum sale price established for agricultural commodities owned or controlled by the Commodity Credit Corporation, as provided in section 407 of the Agricultural Act of 1949.

“(4) DELIVERY DATES.—No purchase or commitment to purchase any imported agricultural commodity shall specify a delivery date which is more than 1 year after the expiration of this section.

“(5) PRESIDENTIAL DETERMINATIONS.—Except as provided in paragraph (7), the President may not execute a contract under this subsection unless the President determines that—

“(A) the industrial resource or critical technology item is essential to the national defense;

“(B) without Presidential action under the authority provided for in this section, United States industry cannot reasonably be expected to provide the capability for the needed industrial resource or critical technology item in a timely manner;

“(C) purchases, purchase commitments, or other action pursuant to this section are the most cost-effective, expedient, and practical alternative method for meeting the need; and

“(D) the combination of the United States national defense demand and foreseeable nondefense demand for the industrial resource or critical technology item is not less than the output of domestic industrial capability, as determined by the President, including the output to be established through the purchase, purchase commitment, or other action.

“(6) IDENTIFICATION OF SHORTFALL.—

“(A) IN GENERAL.—Except as provided in paragraph (7), the President shall take no action under this section unless the industrial resource shortfall which such action is intended to correct has been identified in the Budget of the United States, or amendments thereto, submitted to the Congress and accompanied by a statement from the President demonstrating that the budget submission is in accordance with the provisions of paragraph (5).

“(B) TIMING OF ACTION.—Any such action may be taken only after 60 days have elapsed after such industrial resource shortfall has been identified pursuant to subparagraph (A).

“(C) LIMITATION.—If the taking of any action or actions under this section to correct an industrial resource shortfall would cause the aggregate outstanding amount of all such actions for such industrial resource shortfall to exceed \$50,000,000, any such action or actions may be taken only if specifically authorized by law.

“(7) WAIVER.—The requirements of paragraphs (1) through (6) may be waived—

“(A) during periods of national emergency declared by the Congress or the President; or

“(B) upon a determination by the President, on a nondelegable basis, that a specific guarantee is necessary to avert an industrial resource or critical technology shortfall that would severely impair national defense capability.”.

(2) PURCHASE PERIODS.—Section 303(b) of the Defense Production Act of 1950 (50 U.S.C. 2093(b)) is amended by striking “September 30, 1995” and inserting “a date that is not more than 10 years from the date such purchase, purchase commitment, or sale was initially made”.

(d) DEVELOPING SUBSTITUTES.—Section 303(g) of the Defense Production Act of 1950 (50 U.S.C. App. 2093(g)) is amended by inserting before the period the following: “, critical components, critical technology items, and other industrial resources”.

SEC. 122. DEFENSE PRODUCTION ACT FUND.

Section 304 of the Defense Production Act of 1950 (50 U.S.C. App. 2094) is amended to read as follows:

“SEC. 304. DEFENSE PRODUCTION ACT FUND.

“(a) ESTABLISHMENT OF FUND.—There is established in the Treasury of the United States a separate fund to be known as the Defense Production Act Fund (hereafter in this section referred to as ‘the Fund’).

“(b) MONEYS IN FUND.—There shall be credited to the Fund—

“(1) all moneys appropriated for the Fund, as authorized by section 711(c); and

“(2) all moneys received by the Fund on transactions entered into pursuant to section 303.

“(c) USE OF FUND.—The Fund shall be available to carry out the provisions and purposes of this title, subject to the limitations set forth in this Act and in appropriations Acts.

“(d) DURATION OF FUND.—Moneys in the Fund shall remain available until expended.

“(e) FUND BALANCE.—The Fund balance at the close of each fiscal year shall not exceed \$400,000,000, excluding any moneys appropriated to the Fund during that fiscal year or obligated funds. If, at the close of any fiscal year, the Fund balance exceeds \$400,000,000, the amount in excess of \$400,000,000 shall be paid into the general fund of the Treasury.

“(f) FUND MANAGER.—The President shall designate a Fund manager. The duties of the Fund manager shall include—

“(1) determining the liability of the Fund in accordance with subsection (g);

“(2) ensuring the visibility and accountability of transactions engaged in through the Fund; and

“(3) reporting to the Congress each year regarding activities of the Fund during the previous fiscal year.

“(g) LIABILITIES AGAINST FUND.—When any agreement entered into pursuant to this title after December 31, 1991, imposes any contingent liability upon the United States, such liability shall be considered an obligation against the Fund.”.

SEC. 123. DECLARATION OF OFFSET POLICY.

(a) IN GENERAL.—Recognizing that certain offsets for military exports are economically inefficient and market distorting, and mindful of the need to minimize the adverse effects of offsets in military exports while ensuring that the ability of United States

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Reports.

50 USC app.
2099 note.

firms to compete for military export sales is not undermined, it is the policy of the Congress that—

(1) no agency of the United States Government shall encourage, enter directly into, or commit United States firms to any offset arrangement in connection with the sale of defense goods or services to foreign governments;

(2) United States Government funds shall not be used to finance offsets in security assistance transactions, except in accordance with policies and procedures that were in existence on March 1, 1992;

(3) nothing in this section shall prevent agencies of the United States Government from fulfilling obligations incurred through international agreements entered into before March 1, 1992; and

(4) the decision whether to engage in offsets, and the responsibility for negotiating and implementing offset arrangements, reside with the companies involved.

(b) **PRESIDENTIAL APPROVAL OF EXCEPTIONS.**—It is the policy of the Congress that the President may approve an exception to the policy stated in subsection (a) after receiving the recommendation of the National Security Council.

(c) **CONSULTATION.**—It is the policy of the Congress that the President shall designate the Secretary of Defense to lead, in coordination with the Secretary of State, an interagency team to consult with foreign nations on limiting the adverse effects of offsets in defense procurement. The President shall transmit an annual report on the results of these consultations to the Congress as part of the report required under section 309(a) of the Defense Production Act of 1950.

President.

Reports.

SEC. 124. ANNUAL REPORT ON IMPACT OF OFFSETS.

Section 309 of the Defense Production Act of 1950 (50 U.S.C. App. 2099) is amended—

(1) in subsection (a)—

(A) by striking “(a) REPORT REQUIRED.—Not later” and inserting: “(a) ANNUAL REPORT ON IMPACT OF OFFSETS.—“(1) REPORT REQUIRED.—Not later”;

(B) by striking the second sentence; and

(C) by adding at the end the following new paragraph:

“(2) **DUTIES OF THE SECRETARY OF COMMERCE.**—The Secretary of Commerce (hereafter in this subsection referred to as ‘the Secretary’) shall—

“(A) prepare the report required by paragraph (1);

“(B) consult with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, and the United States Trade Representative in connection with the preparation of such report; and

“(C) function as the President’s Executive Agent for carrying out this section.”;

(2) by amending subsection (b) to read as follows:

“(b) **INTERAGENCY STUDIES AND RELATED DATA.**—

“(1) **PURPOSE OF REPORT.**—Each report required under subsection (a) shall identify the cumulative effects of offset agreements on—

“(A) the full range of domestic defense productive capability (with special attention paid to the firms serving as lower-tier subcontractors or suppliers); and

“(B) the domestic defense technology base as a consequence of the technology transfers associated with such offset agreements.

“(2) USE OF DATA.—Data developed or compiled by any agency while conducting any interagency study or other independent study or analysis shall be made available to the Secretary to facilitate the execution of the Secretary’s responsibilities with respect to trade offset and countertrade policy development.”; and

(3) by adding at the end the following new subsections:

“(c) NOTICE OF OFFSET AGREEMENTS.—

“(1) IN GENERAL.—If a United States firm enters into a contract for the sale of a weapon system or defense-related item to a foreign country or foreign firm and such contract is subject to an offset agreement exceeding \$5,000,000 in value, such firm shall furnish to the official designated in the regulations promulgated pursuant to paragraph (2) information concerning such sale.

“(2) REGULATIONS.—The information to be furnished under paragraph (1) shall be prescribed in regulations promulgated by the Secretary. Such regulations shall provide protection from public disclosure for such information, unless public disclosure is subsequently specifically authorized by the firm furnishing the information.

“(d) CONTENTS OF REPORT.—

“(1) IN GENERAL.—Each report under subsection (a) shall include—

“(A) a net assessment of the elements of the industrial base and technology base covered by the report;

“(B) recommendations for appropriate remedial action under the authority of this Act, or other law or regulations;

“(C) a summary of the findings and recommendations of any interagency studies conducted during the reporting period under subsection (b);

“(D) a summary of offset arrangements concluded during the reporting period for which information has been furnished pursuant to subsection (c); and

“(E) a summary and analysis of any bilateral and multilateral negotiations relating to the use of offsets completed during the reporting period.

“(2) ALTERNATIVE FINDINGS OR RECOMMENDATIONS.—Each report required under this section shall include any alternative findings or recommendations offered by any departmental Secretary, agency head, or the United States Trade Representative to the Secretary.

“(e) UTILIZATION OF ANNUAL REPORT IN NEGOTIATIONS.—The findings and recommendations of the reports required by subsection (a), and any interagency reports and analyses shall be considered by representatives of the United States during bilateral and multilateral negotiations to minimize the adverse effects of offsets.”.

SEC. 125. CIVIL-MILITARY INTEGRATION.

Title III of the Defense Production Act of 1950 is amended by adding at the end the following new section:

“SEC. 310. CIVIL-MILITARY INTEGRATION.50 USC app.
2099a.

“An important purpose of this title is the creation of production capacity that will remain economically viable after guarantees and other assistance provided under this title have expired.”

SEC. 126. TESTING, QUALIFICATION, AND USE OF INDUSTRIAL RESOURCES DEVELOPED UNDER TITLE III PROJECTS.

(a) **IN GENERAL.**—Not later than 270 days after the date of enactment of this Act, the single governmentwide Federal Acquisition Regulation, referred to in section 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1)) shall be amended to provide for testing and qualification (pursuant to subsection (b)) and use (pursuant to subsection (c)) of the industrial resources manufactured or developed with assistance provided under section 301, 302, or 303 of the Defense Production Act of 1950.

(b) **TESTING AND QUALIFICATION.**—Any testing and qualification required for the use or incorporation of the industrial resource developed or manufactured with such assistance shall be undertaken upon the request of the title III project contractor and the costs of such testing and qualification shall be borne by the department or agency imposing the testing and qualification requirement.

(c) **USE.**—Upon qualification, the industrial resource shall be eligible for use with respect to the development and manufacture of a major system or an item of supply being undertaken by an executive agency.

(d) **DEFINITIONS.**—For purposes of this section—

(1) the term “industrial resources” has the same meaning as in section 702(11) of the Defense Production Act of 1950;

(2) the term “item of supply” has the same meaning as in section 4(10) of the Office of Federal Procurement Policy Act;

(3) the term “major system” has the same meaning as in section 4(9) of the Office of Federal Procurement Policy Act; and

(4) the term “title III project contractor” means a contractor who has received assistance for the development or manufacture of an industrial resource under section 301, 302, or 303 of the Defense Production Act of 1950 (50 U.S.C. App. 2091–2093).

PART D—AMENDMENTS TO TITLE VII OF THE DEFENSE PRODUCTION ACT**SEC. 131. SMALL BUSINESS.**

Section 701 of the Defense Production Act of 1950 (50 U.S.C. App. 2151) is amended to read as follows:

“SEC. 701. SMALL BUSINESS.

“(a) **PARTICIPATION.**—Small business concerns shall be given the maximum practicable opportunity to participate as contractors, and subcontractors at various tiers, in all programs to maintain and strengthen the Nation’s industrial base and technology base undertaken pursuant to this Act.

“(b) **ADMINISTRATION OF ACT.**—In administering the programs, implementing regulations, policies, and procedures under this Act,

requests, applications, or appeals from small business concerns shall, to the maximum extent practicable, be expeditiously handled.

“(c) **ADVISORY COMMITTEE PARTICIPATION.**—Representatives of small business concerns shall be afforded the maximum opportunity to participate in such advisory committees as may be established pursuant to this Act.

“(d) **INFORMATION.**—Information about this Act and activities undertaken in accordance with this Act shall be made available to small business concerns.

“(e) **ALLOCATIONS UNDER SECTION 101.**—Whenever the President makes a determination to exercise any authority to allocate any material pursuant to section 101, small business concerns shall be accorded, to the extent practicable, a fair share of such material, in proportion to the share received by such business concerns under normal conditions, giving such special consideration as may be possible to emerging small business concerns.”.

SEC. 132. DEFINITIONS.

Section 702 of the Defense Production Act of 1950 (50 U.S.C. App. 2152) is amended to read as follows:

“SEC. 702. DEFINITIONS.

“For purposes of this Act, the following definitions shall apply:

“(1) **CRITICAL COMPONENT.**—The term ‘critical component’ includes such components, subsystems, systems, and related special tooling and test equipment essential to the production, repair, maintenance, or operation of weapon systems or other items of military equipment identified by the Secretary of Defense as being essential to the execution of the national security strategy of the United States. Components identified as critical by a National Security Assessment conducted pursuant to section 113(i) of title 10, United States Code, or by a Presidential determination as a result of a petition filed under section 232 of the Trade Expansion Act of 1962 shall be designated as critical components for purposes of this Act, unless the President determines that the designation is unwarranted.

“(2) **CRITICAL INDUSTRY FOR NATIONAL SECURITY.**—The term ‘critical industry for national security’ means any industry (or industry sector) identified pursuant to section 2503(6) of title 10, United States Code, and such other industries or industry sectors as may be designated by the President as essential to provide industrial resources required for the execution of the national security strategy of the United States.

“(3) **CRITICAL TECHNOLOGY.**—The term ‘critical technology’ includes any technology that is included in 1 or more of the plans submitted pursuant to section 6681 of title 42, United States Code, or section 2508 of title 10, United States Code (unless subsequently deleted), or such other emerging or dual use technology as may be designated by the President.

“(4) **CRITICAL TECHNOLOGY ITEM.**—The term ‘critical technology item’ means materials directly employing, derived from, or utilizing a critical technology.

“(5) **DEFENSE CONTRACTOR.**—The term ‘defense contractor’ means any person who enters into a contract with the United States—

“(A) to furnish materials, industrial resources, or a critical technology for the national defense; or

“(B) to perform services for the national defense.

“(6) DOMESTIC DEFENSE INDUSTRIAL BASE.—The term ‘domestic defense industrial base’ means domestic sources which are providing, or which would be reasonably expected to provide, materials or services to meet national defense requirements during peacetime, graduated mobilization, national emergency, or war.

“(7) DOMESTIC SOURCE.—The term ‘domestic source’ means a business concern—

“(A) that performs in the United States or Canada substantially all of the research and development, engineering, manufacturing, and production activities required of such business concern under a contract with the United States relating to a critical component or a critical technology item; and

“(B) that procures from business concerns described in subparagraph (A) substantially all of any components and assemblies required under a contract with the United States relating to a critical component or critical technology item.

“(8) ESSENTIAL WEAPON SYSTEM.—The term ‘essential weapon system’ means a major weapon system and other items of military equipment identified by the Secretary of Defense as being essential to the execution of the national security strategy of the United States.

“(9) FACILITIES.—The term ‘facilities’ includes all types of buildings, structures, or other improvements to real property (but excluding farms, churches or other places of worship, and private dwelling houses), and services relating to the use of any such building, structure, or other improvement.

“(10) FOREIGN SOURCE.—The term ‘foreign source’ means a business entity other than a ‘domestic source’.

“(11) INDUSTRIAL RESOURCES.—The term ‘industrial resources’ means materials, services, processes, or manufacturing equipment (including the processes, technologies, and ancillary services for the use of such equipment) needed to establish or maintain an efficient and modern national defense industrial capacity.

“(12) MATERIALS.—The term ‘materials’ includes—

“(A) any raw materials (including minerals, metals, and advanced processed materials), commodities, articles, components (including critical components), products, and items of supply; and

“(B) any technical information or services ancillary to the use of any such materials, commodities, articles, components, products, or items.

“(13) NATIONAL DEFENSE.—The term ‘national defense’ means programs for military and energy production or construction, military assistance to any foreign nation, stockpiling, space, and any directly related activity.

“(14) PERSON.—The term ‘person’ includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof, or any State or local government or agency thereof.

“(15) SERVICES.—The term ‘services’ includes any effort that is needed for or incidental to—

“(A) the development, production, processing, distribution, delivery, or use of an industrial resource or a critical technology item; or

“(B) the construction of facilities.

“(16) SMALL BUSINESS CONCERN.—The term ‘small business concern’ means a business concern that meets the requirements of section 3(a) of the Small Business Act and the regulations promulgated pursuant to that section, and includes such business concerns owned and controlled by socially and economically disadvantaged individuals or by women.

“(17) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term ‘small business concern owned and controlled by socially and economically disadvantaged individuals’ has the same meaning as in section 8(d)(3)(C) of the Small Business Act.”

SEC. 133. APPOINTMENT OF PERSONNEL.

Section 703 of the Defense Production Act of 1950 (50 U.S.C. App. 2153) is amended to read as follows:

“SEC. 703. CIVILIAN PERSONNEL.

“Any officer or agency head may—

“(1) appoint civilian personnel without regard to section 5331(b) of title 5, United States Code, and without regard to the provisions of title 5, United States Code, governing appointments in the competitive service; and

“(2) fix the rate of basic pay for such personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates,

except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule, as the President deems appropriate to carry out this Act.”

SEC. 134. REGULATIONS AND ORDERS.

Section 704 of the Defense Production Act of 1950 (50 U.S.C. App. 2154) is amended to read as follows:

“SEC. 704. REGULATIONS AND ORDERS.

“(a) IN GENERAL.—Subject to section 709 and subsection (b), the President may prescribe such regulations and issue such orders as the President may determine to be appropriate to carry out this Act.

“(b) PROCUREMENT REGULATIONS.—Any procurement regulation, procedure, or form issued pursuant to subsection (a) shall be issued pursuant to section 25 of the Office of Federal Procurement Policy Act, and shall conform to any governmentwide procurement policy or regulation issued pursuant to section 6 or 25 of that Act.”

SEC. 135. INFORMATION ON THE DEFENSE INDUSTRIAL BASE.

Title VII of the Defense Production Act of 1950 (50 U.S.C. App. 2151 et seq.) is amended by adding at the end the following new section:

“SEC. 722. DEFENSE INDUSTRIAL BASE INFORMATION SYSTEM.

“(a) ESTABLISHMENT REQUIRED.—

"(1) IN GENERAL.—The President, acting through the Secretary of Defense and the heads of such other Federal agencies as the President may determine to be appropriate, shall provide for the establishment of an information system on the domestic defense industrial base which—

"(A) meets the requirements of this section; and

"(B) includes a systematic continuous procedure, to collect and analyze information necessary to evaluate—

"(i) the adequacy of domestic industrial capacity to furnish critical components and critical technology items essential to the national security of the United States;

"(ii) dependence on foreign sources for critical components and critical technology items essential to defense production; and

"(iii) the reliability of foreign sources for critical components and critical technology items.

"(2) INCORPORATION OF DINET.—The Defense Information Network (or DINET), as established and maintained by the Secretary of Defense on the date of enactment of the Defense Production Act Amendments of 1992, shall be incorporated into the system established pursuant to paragraph (1).

"(3) USE OF INFORMATION.—Information collected and analyzed under the procedure established pursuant to paragraph (1) shall constitute a basis for making any determination to exercise any authority under this Act and a procedure for using such information shall be integrated into the decision-making process with regard to the exercise of any such authority.

"(b) SOURCES OF INFORMATION.—

"(1) FOREIGN DEPENDENCE.—

"(A) SCOPE OF INFORMATION REVIEW.—The procedure established to meet the requirement of subsection (a)(1)(B)(ii) shall address defense production with respect to the operations of prime contractors and at least the first 2 tiers of subcontractors, or at lower tiers if a critical component is identified at such lower tier.

"(B) USE OF EXISTING DATA COLLECTION AND REVIEW CAPABILITIES.—To the extent feasible and appropriate, the President shall build upon existing methods of data collection and analysis and shall integrate information available from intelligence agencies with respect to industrial and technological conditions in foreign countries.

"(C) INITIAL EMPHASIS ON PRIORITY LISTS.—In establishing the procedure referred to in subparagraph (A), the Secretary may place initial emphasis on the production of critical components and critical technology items.

"(2) PRODUCTION BASE ANALYSIS.—

"(A) COMPREHENSIVE REVIEW.—The analysis of the production base for any major system acquisition included in the information system maintained pursuant to subsection (a) shall, in addition to any information and analyses the President may require—

"(i) include a review of all subcontractors and suppliers, beginning with any raw material, special alloy, or composite material involved in the production of a completed system;

“(ii) identify each contractor and subcontractor (or supplier) at each level of production for such major system acquisition which represents a potential for delaying or preventing the system’s production and acquisition, including the identity of each contractor or subcontractor whose contract qualifies as a foreign source or sole source contract and any supplier which is a foreign source or sole source for any item required in the production, including critical components; and
 “(iii) include information to permit appropriate management of accelerated or surge production.

“(B) INITIAL REQUIREMENT FOR STUDY OF PRODUCTION BASES FOR NOT MORE THAN 6 MAJOR WEAPON SYSTEMS.—In establishing the information system under subsection (a), the President, acting through the Secretary of Defense, shall require an analysis of the production base for not more than 2 weapons of each military department which are major systems (as defined in section 2302(5) of title 10, United States Code). Each such analysis shall identify the critical components of each system.

“(3) CONSULTATION REGARDING THE CENSUS OF MANUFACTURERS.—

“(A) IN GENERAL.—The Secretary of Commerce, acting through the Bureau of the Census, shall consult with the Secretary of Defense and the Director of the Federal Emergency Management Agency to improve the usefulness of information derived from the Census of Manufacturers in carrying out this section.

“(B) ISSUES TO BE ADDRESSED.—The consultation required under subparagraph (A) shall address improvements in the level of detail, timeliness, and availability of input and output analyses derived from the Census of Manufacturers necessary to carry out this section.

“(c) STRATEGIC PLAN FOR DEVELOPING COMPREHENSIVE SYSTEM.—

Reports.

“(1) PLAN REQUIRED.—Not later than December 31, 1993, the President shall provide for the establishment of and report to the Congress on a strategic plan for developing a cost-effective, comprehensive information system capable of identifying on a timely, ongoing basis vulnerability in critical components and critical technology items.

“(2) ASSESSMENT OF CERTAIN PROCEDURES.—In establishing the plan pursuant to paragraph (1), the President shall assess the performance and cost-effectiveness of procedures implemented under subsection (b), and shall seek to build upon such procedures, as appropriate.

“(d) CAPABILITIES OF SYSTEM.—

“(1) IN GENERAL.—In connection with the establishment of the information system under subsection (a), the President shall direct the Secretary of Defense, the Secretary of Commerce, and the heads of such other Federal agencies as the President may determine to be appropriate—

“(A) to consult with each other and provide such information, assistance, and cooperation as may be necessary to establish and maintain the information system required by this section in a manner which allows the coordinated and efficient entry of information on the domes-

tic defense industrial base into, and the withdrawal, subject to the protection of proprietary data, of information on the domestic defense industrial base from the system on an on-line interactive basis by the Department of Defense;

“(B) to assure access to the information on the system, as appropriate, for all participating Federal agencies, including each military department;

“(C) to coordinate standards, definitions, and specifications for information on defense production, which is collected by the Department of Defense and the military departments so that such information can be used by any Federal agency or department, as the President determines to be appropriate; and

“(D) to assure that the information in the system is updated, as appropriate, with the active assistance of the private sector.

“(2) TASK FORCE ON MILITARY-CIVILIAN PARTICIPATION.—

Upon the establishment of the information system under subsection (a), the President shall convene a task force consisting of the Secretary of Defense, the Secretary of Commerce, the Secretary of each military department, and the heads of such other Federal agencies and departments as the President may determine to be appropriate to establish guidelines and procedures to ensure that all Federal agencies and departments which acquire information with respect to the domestic defense industrial base are fully participating in the system, unless the President determines that all appropriate Federal agencies and departments, including each military department, are voluntarily providing information which is necessary for the system to carry out the purposes of this Act and chapter 148 of title 10, United States Code.

“(e) REPORT ON SUBCONTRACTOR AND SUPPLIER BASE.—

“(1) REPORT REQUIRED.—The President shall issue a report (in accordance with paragraph (4) which includes—

“(A) a list of critical components, technologies, and technology items for which there is found to be inadequate domestic industrial capacity or capability; and

“(B) an assessment of those subsectors of the economy of the United States which—

“(i) support production of any component, technology, or technology item listed pursuant to subparagraph (A); or

“(ii) have been identified as being critical to the development and production of components required for the production of weapons, weapon systems, and other military equipment essential to the national defense.

“(2) MATTERS TO BE CONSIDERED.—The assessment made under paragraph (1)(B) shall include consideration of—

“(A) the capacity of domestic sources, especially commercial firms, to fulfill peacetime requirements and graduated mobilization requirements for various items of supply and services;

“(B) any trend relating to the capabilities of domestic sources to meet such peacetime and mobilization requirements;

“(C) the extent to which the production or acquisition of various items of military material is dependent on foreign sources; and

“(D) any reason for the decline of the capabilities of selected sectors of the United States economy necessary to meet peacetime and mobilization requirements, including—

“(i) stability of defense requirements;

“(ii) acquisition policies;

“(iii) vertical integration of various segments of the industrial base;

“(iv) superiority of foreign technology and production efficiencies;

“(v) foreign government support of nondomestic sources; and

“(vi) offset arrangements.

“(3) POLICY RECOMMENDATIONS.—The report required by paragraph (1) may provide specific policy recommendations to correct deficiencies identified in the assessment, which would help to strengthen domestic sources.

“(4) TIME FOR ISSUANCE.—The report required by paragraph (1) shall be issued not later than July 1 of each even-numbered year which begins after 1992.

“(5) RELEASE OF UNCLASSIFIED REPORT.—The report required by this subsection may be classified. An unclassified version of the report shall be made available to the public.”.

SEC. 136. PUBLIC PARTICIPATION IN RULEMAKING.

(a) IN GENERAL.—Section 709 of the Defense Production Act of 1950 (50 U.S.C. 2159) is amended to read as follows:

“SEC. 709. PUBLIC PARTICIPATION IN RULEMAKING.

“(a) EXEMPTION FROM THE ADMINISTRATIVE PROCEDURE ACT.—Any regulation issued under this Act shall not be subject to sections 551 through 559 of title 5, United States Code.

“(b) OPPORTUNITY FOR NOTICE AND COMMENT.—

“(1) IN GENERAL.—Except as provided in subsection (c), any regulation issued under this Act shall be published in the Federal Register and opportunity for public comment shall be provided for not less than 30 days, consistent with the requirements of section 553(b) of title 5, United States Code.

“(2) WAIVER FOR TEMPORARY PROVISIONS.—The requirements of paragraph (1) may be waived, if—

“(A) the officer authorized to issue the regulation finds that urgent and compelling circumstances make compliance with such requirements impracticable;

“(B) the regulation is issued on a temporary basis; and

“(C) the publication of such temporary regulation is accompanied by the finding made under subparagraph (A) (and a brief statement of the reasons for such finding) and an opportunity for public comment is provided for not less than 30 days before any regulation becomes final.

“(3) CONSIDERATION OF PUBLIC COMMENTS.—All comments received during the public comment period specified pursuant to paragraph (1) or (2) shall be considered and the publication of the final regulation shall contain written responses to such comments.

“(c) PUBLIC COMMENT ON PROCUREMENT REGULATIONS.—Any procurement policy, regulation, procedure, or form (including any amendment or modification of any such policy, regulation, procedure, or form) issued under this Act shall be subject to section 22 of the Office of Federal Procurement Policy Act.”

(b) SCOPE OF APPLICATION.—Section 709 of the Defense Production Act of 1950 (50 U.S.C. App. 2159), as amended by subsection (a) of this section, shall not apply to any regulation issued in proposed or final form on or before the date of enactment of this Act.

50 USC app.
2159 note.

PART E—TECHNICAL AMENDMENTS

SEC. 141. TECHNICAL CORRECTION.

Section 301(e)(2)(B) of the Defense Production Act of 1950 (50 U.S.C. App. 2091(e)(2)(B)) is amended by striking “and to the Committees on Banking and Currency of the respective Houses” and inserting “and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives”.

SEC. 142. INVESTIGATIONS; RECORDS; REPORTS; SUBPOENAS.

Section 705 of the Defense Production Act of 1950 (50 U.S.C. App. 2155) is amended—

- (1) by striking “subpena” each place such term appears and inserting “subpoena”;
- (2) by redesignating subsections (c), (d), (e), and (f) as subsections (b), (c), (d), and (e), respectively;
- (3) in subsection (c) (as redesignated by paragraph (2)), by striking “\$1,000” and inserting “\$10,000”;
- (4) in subsection (d) (as redesignated by paragraph (2)), by striking all after the first sentence; and
- (5) in subsection (e) (as redesignated by paragraph (2)), by striking “subpenaed” and inserting “subpoenaed”.

SEC. 143. EMPLOYMENT OF PERSONNEL.

(a) NOTICE OF APPOINTMENT AND FINANCIAL DISCLOSURE FOR EMPLOYEES SERVING WITHOUT COMPENSATION.—Section 710(b)(6) of the Defense Production Act of 1950 (50 U.S.C. App. 2160(b)(6)) is amended to read as follows:

“(6) NOTICE AND FINANCIAL DISCLOSURE REQUIREMENTS.—

“(A) PUBLIC NOTICE OF APPOINTMENT.—The head of any department or agency who appoints any individual under this subsection shall publish a notice of such appointment in the Federal Register, including the name of the appointee, the employing department or agency, the title of the appointee’s position, and the name of the appointee’s private employer.

“(B) FINANCIAL DISCLOSURE.—Any individual appointed under this subsection who is not required to file a financial disclosure report pursuant to section 101 of the Ethics in Government Act of 1978, shall file a confidential financial disclosure report pursuant to section 107 of that Act with the appointing department or agency.”

(b) TECHNICAL AMENDMENTS.—Section 710(b) of the Defense Production Act of 1950 (50 U.S.C. App. 2160(b)) is amended—

- (1) in paragraph (7)—

Federal
Register,
publication.

Reports.

(A) by striking "Chairman of the United States Civil Service Commission" and inserting "Director of the Office of Personnel Management";

(B) by striking "his findings" and inserting "his or her findings";

(C) by striking "and the Joint Committee on Defense Production"; and

(D) by striking "he may" and inserting "he or she may"; and

(2) in paragraph (8), by striking "transportation and not to exceed \$15 per diem in lieu of subsistence while away from their homes or regular places of business pursuant to such appointment" and inserting "reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions for which they were appointed in the same manner as persons employed intermittently in the Federal Government are allowed expenses under section 5703 of title 5, United States Code".

SEC. 144. TECHNICAL CORRECTION.

Section 711(a)(1) of the Defense Production Act of 1950 (50 U.S.C. App. 2161(a)(1)) is amended by striking "Bureau of the Budget" and inserting "Office of Management and Budget".

PART F—REPEALERS AND CONFORMING AMENDMENTS

SEC. 151. SYNTHETIC FUEL ACTION.

Section 307 of the Defense Production Act of 1950 (50 U.S.C. App. 2097) is amended—

(1) in subsection (b), by striking the second sentence; and

(2) by striking subsection (c) and all that follows through the end of the section.

SEC. 152. REPEAL OF INTEREST PAYMENT PROVISIONS.

Section 711 of the Defense Production Act of 1950 (50 U.S.C. App. 2161) is amended—

(1) by striking subsection (b); and

(2) in subsection (a)—

(A) by striking "(a)(1) Except as provided in paragraph (2) and paragraph (4)" and inserting the following:

"(a) AUTHORIZATION.—

"(1) IN GENERAL.— Except as provided in subsection (c).";

(B) in paragraph (1), in the parenthetical, by striking "and for payment of interest under subsection (b) of this section";

(C) by striking paragraph (2);

(D) in paragraph (3), by striking "(3) There are" and inserting the following:

"(b) SECTION 305 AUTHORIZATION.—"; and

(E) in paragraph (4)—

(i) by striking "(4)(A) There are" and inserting the following:

"(c) SECTION 303 AUTHORIZATION.—There are"; and

(ii) by striking subparagraph (B).

SEC. 153. JOINT COMMITTEE ON DEFENSE PRODUCTION.

Section 712 of the Defense Production Act of 1950 (50 U.S.C. App. 2162) is repealed.

SEC. 154. PERSONS DISQUALIFIED FOR EMPLOYMENT.

Section 716 of the Defense Production Act of 1950 (50 U.S.C. App. 2165) is repealed.

SEC. 155. FEASIBILITY STUDY ON UNIFORM COST ACCOUNTING STANDARDS; REPORT SUBMITTED.

Section 718 of the Defense Production Act of 1950 (50 U.S.C. App. 2167) is repealed.

SEC. 156. NATIONAL COMMISSION ON SUPPLIES AND SHORTAGES.

Section 720 of the Defense Production Act of 1950 (50 U.S.C. App. 2169) is repealed.

PART G—REAUTHORIZATION OF SELECTED PROVISIONS

SEC. 161. AUTHORIZATION OF APPROPRIATIONS.

Section 711 of the Defense Production Act of 1950 (50 U.S.C. App. 2161) (as amended by section 152 of this Act) is amended by adding at the end the following new subsection:

“(d) TITLE III AUTHORIZATION.—There are authorized to be appropriated for each of fiscal years 1993, 1994, and 1995 not more than \$200,000,000 to carry out the provisions of title III of this Act.”.

SEC. 162. EXTENSION OF PROGRAM.

The first sentence of section 717(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2166(a)) is amended by striking “March 1, 1992” and inserting “September 30, 1995”.

SEC. 163. PRESIDENTIAL STUDY.

Section 721 of the Defense Production Act of 1950 (50 U.S.C. App. 2170) is amended by adding at the end the following new subsection:

“(k) QUADRENNIAL REPORT.—

“(1) IN GENERAL.—In order to assist the Congress in its oversight responsibilities with respect to this section, the President and such agencies as the President shall designate shall complete and furnish to the Congress, not later than 1 year after the date of enactment of this section and upon the expiration of every 4 years thereafter, a report which—

“(A) evaluates whether there is credible evidence of a coordinated strategy by 1 or more countries or companies to acquire United States companies involved in research, development, or production of critical technologies for which the United States is a leading producer; and

“(B) evaluates whether there are industrial espionage activities directed by foreign governments against private United States companies aimed at obtaining commercial secrets related to critical technologies.

“(2) DEFINITION.—For the purposes of this subsection, the term ‘critical technologies’ means technologies identified under title VI of the National Science and Technology Policy, Organization, and Priorities Act of 1976 or other critical tech-

President.

nology, critical components, or critical technology items essential to national defense identified pursuant to this section.

"(3) RELEASE OF UNCLASSIFIED STUDY.—The report required by this subsection may be classified. An unclassified version of the report shall be made available to the public."

TITLE II—ADDITIONAL PROVISIONS TO IMPROVE INDUSTRIAL PREPAREDNESS

SEC. 201. DISCOURAGING UNFAIR TRADE PRACTICES.

Regulations.

(a) SUSPENSION OR DEBARMENT AUTHORIZED.—Not later than 270 days after the date of enactment of this Act, subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation) shall be amended to specify the circumstances under which a contractor, who has engaged in an unfair trade practice, as defined in subsection (b), may be found to presently lack such business integrity or business honesty to such a degree as to seriously and directly affect the responsibility of the contractor to perform any contract awarded by the Federal Government or perform a subcontract under such a contract.

(b) DEFINITION OF "UNFAIR TRADE PRACTICE".—For purposes of this section, the term "unfair trade practice" means the commission of any of the following acts by a contractor:

(1) UNFAIR TRADE PRACTICES.—An unfair trade practice, as determined by the International Trade Commission, for a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

(2) VIOLATION OF AGREEMENTS OF COCOM.—A violation, as determined by the Secretary of Commerce, of any agreement of the group known as the "Coordinating Committee" for purposes of the Export Administration Act of 1979 or any similar bilateral or multilateral export control agreement.

(3) FALSE STATEMENTS.—A knowingly false statement regarding a material element of a certification concerning the foreign content of an item of supply, as determined by the Secretary of the department or the head of the agency to which such certificate was furnished.

SEC. 202. FRAUDULENT USE OF "MADE IN AMERICA" LABELS.

Regulations.

Not later than 270 days after the date of enactment of this Act, subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation) shall be amended to specify that any person having been determined to have intentionally affixed a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States may, when such product was not made in the United States, be found to presently lack business integrity or business honesty to such a degree as to seriously and directly affect the responsibility of such person to perform any contract awarded by the Federal Government or perform a subcontract under such a contract.

50 USC app.
2062 note.

SEC. 203. EVALUATION OF DOMESTIC DEFENSE INDUSTRIAL BASE POLICY.

(a) CONGRESSIONAL COMMISSION ON THE EVALUATION OF DEFENSE INDUSTRIAL BASE POLICY ESTABLISHED.—There is established the Congressional Commission on the Evaluation of the

Defense Industrial Base Policy (hereafter in this section referred to as the "Commission").

(b) DUTIES OF THE COMMISSION.—

(1) IN GENERAL.—The Commission shall develop criteria for maintaining the strength of the domestic defense industrial base for purposes of supporting the national security strategy of the United States.

(2) CONSIDERATION OF AGENCY PROCEDURES AND ACTIVITIES.—In developing criteria under paragraph (1), the Commission shall consider, with respect to each Federal agency and department which has any responsibility for maintaining the strength of the domestic defense industrial base—

(A) the extent to which the statutory authority, policies, regulations, organizational arrangements, plans, programs, and budgets of such agency or department are adequate for the purpose of maintaining the strength of the domestic defense industrial base; and

(B) the degree to which such authority, policies, regulations, arrangements, plans, programs, and budgets are being effectively implemented and sufficiently coordinated (within the agency or department and with other Federal agencies and departments).

(3) EVALUATION OF CIVIL-MILITARY INTEGRATION.—The Commission, in developing criteria under paragraph (1) and considering agency procedures and activities under paragraph (2), shall evaluate the feasibility of integrating defense research, development, production, acquisition, and other relevant contracting activities with similar activities in the commercial sector, and the degree to which such integration is being implemented by the agency or department.

(c) MEMBERSHIP.—

(1) NUMBER AND APPOINTMENT.—The Commission shall be composed of 9 members, including—

(A) 3 members appointed by the Speaker of the House of Representatives (2 of whom shall be appointed upon the recommendation of the majority leader of the House of Representatives and 1 of whom shall be appointed upon the recommendation of the minority leader of the House of Representatives) from among individuals who are especially qualified to serve on the Commission by reason of their education, training, or experience;

(B) 3 members appointed by the President pro tempore of the Senate (2 of whom shall be appointed upon the recommendation of the majority leader of the Senate and 1 of whom shall be appointed upon the recommendation of the minority leader of the Senate) from among individuals who are especially qualified to serve on the Commission by reason of their education, training, or experience; and

(C) 3 members appointed by a majority of the members appointed under subparagraphs (A) and (B) from among individuals who are especially qualified to serve on the Commission by reason of their education, training, or experience.

(2) TERMS.—

(A) IN GENERAL.—Each member shall be appointed for the life of the Commission.

(B) VACANCY.—A vacancy in the Commission shall be filled in the same manner in which the original appointment was made.

(3) PROHIBITION ON COMPENSATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), members of the Commission shall serve without pay.

(B) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(4) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(5) CHAIRPERSON.—The Chairperson of the Commission shall be elected by the members of the Commission from among the individuals appointed under paragraph (1)(C).

(6) MEETINGS.—The Commission shall meet at the call of the Chairperson or a majority of the members.

(d) POWERS OF COMMISSION.—

(1) HEARINGS AND SESSIONS.—

(A) IN GENERAL.—The Commission may, for the purpose of carrying out this section, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Commission considers appropriate.

(B) ADMINISTRATION OF OATHS.—The Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(2) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take.

(3) OBTAINING OFFICIAL DATA.—

(A) AUTHORITY TO OBTAIN.—Notwithstanding any provision of section 552a of title 5, United States Code, the Commission may secure directly from any department or agency of the United States information necessary to enable the Commission to carry out this Act.

(B) PROCEDURE.—Upon request of the Chairperson of the Commission, the head of a department or agency referred to in subparagraph (A) shall furnish the information requested to the Commission.

(C) USE OF INFORMATION.—The Commission shall be subject to the same limitations with respect to the use or disclosure of any confidential or privileged information, trade secrets, or other proprietary or business-sensitive information which is obtained from any department or agency under this subsection as are applicable to the use or disclosure of such information or secrets by such department or agency.

(4) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(5) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this section.

(e) STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.—

(1) **STAFF.**—Subject to such regulations as the Commission may prescribe, and with the approval of the Commission, the Chairperson may appoint and fix the pay of such personnel as the Chairperson considers appropriate.

(2) **APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.**—The staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

(3) **EXPERTS AND CONSULTANTS.**—Subject to such regulations as the Commission may prescribe, the Chairperson may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the annual rate of basic pay payable for GS-18 of the General Schedule.

(4) **STAFF OF FEDERAL AGENCIES.**—Upon request of the Chairperson, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this Act.

(f) **DOMESTIC DEFENSE INDUSTRIAL BASE DEFINED.**—For the purposes of this section, the term “domestic defense industrial base” means—

(1) the industries in the United States and Canada which at any time are providing national defense materials and services; and

(2) the industries in the United States and Canada which reasonably would be expected to provide national defense materials and services in a time of emergency or war.

(g) **REPORTS.**—The Commission shall submit to the Congress and the President—

(1) an interim report at the end of the 1-year period beginning on the date the Commission first meets with a majority of members present; and

(2) a final report not later than March 1, 1995, on the findings of the Commission under this section with respect to the domestic defense industrial base, together with such recommendations for legislative, administrative, or policy action as the Commission may determine to be appropriate.

(h) **TERMINATION.**—The Commission shall cease to exist 60 days after the date on which the final report is submitted pursuant to subsection (g)(2).

(i) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated an amount equal to not more than \$500,000 to carry out this section, such sums to remain available until the termination of the Commission.

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. ENERGY SECURITY.

Section 203 of the Geothermal Energy Research, Development, and Demonstration Act of 1974 (30 U.S.C. 1143) is amended by striking "1990" and inserting "1993".

SEC. 302. DOMESTIC RETAIL DEPOSIT-TAKING BY FOREIGN BANKS.

(a) **IN GENERAL.**—Section 6(c) of the International Banking Act of 1978 (12 U.S.C. 3104(c)) is amended—

(1) in paragraph (1)—

(A) by inserting "domestic retail" before "deposit accounts"; and

(B) by inserting "and requiring deposit insurance protection," after "\$100,000,"; and

(2) in paragraph (2)—

(A) by striking "Deposit" and inserting "Domestic retail deposit"; and

(B) by inserting "that require deposit insurance protection" after "\$100,000".

(b) **EFFECTIVE DATE.**—This section, and the amendments made by this section, shall have the same effective date as the Federal Deposit Insurance Corporation Improvement Act of 1991.

SEC. 303. DEPOSIT INSURANCE ASSESSMENT RATES FOR LIFELINE ACCOUNT DEPOSITS.

(a) **IN GENERAL.**—Section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)) (as amended by section 302(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991) is amended—

(1) in subparagraph (D), by striking the comma after "members"; and

(2) by adding at the end the following new subparagraph:

"(H) **BANK ENTERPRISE ACT REQUIREMENT.**—The Corporation shall design the risk-based assessment system so that, insofar as the system bases assessments, directly or indirectly, on deposits, the portion of the deposits of any insured depository institution which are attributable to lifeline accounts established in accordance with the Bank Enterprise Act of 1991 shall be subject to assessment at a rate determined in accordance with such Act."

(b) **CONFORMING AMENDMENTS.**—

(1) Section 232(b)(1) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Public Law 102-242) is amended—

(A) by striking "(8), (9), and (10)" and inserting "and (8)"; and

(B) by striking "(9), (10), and (11)" and inserting "and (9)".

(2) Section 233(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991 is amended by striking "section 235" where such term appears in paragraphs (3) and (5) and inserting "section 234".

(3) Section 7(d)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1817(d)(4)) (as added by section 233(c)(1) of the

12 USC 3104
note.

12 USC 1817.

12 USC 1834a.

Federal Deposit Insurance Corporation Improvement Act of 1991) is amended by striking "section 235" and inserting "section 234".

(4) Effective on the effective date of the amendment made by section 302(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991, section 232(a)(1) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 1834(a)(1)) is amended by striking "7(b)(10)" and inserting "7(b)(2)(H)".

Effective date.

(5) Section 10(f) of the Federal Deposit Insurance Act (12 U.S.C. 1820(f)) (as added by section 302(d) of the Federal Deposit Insurance Corporation Improvement Act of 1991) is hereby redesignated as subsection (g).

(6) Section 302(e) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Public Law 102-242, 105 Stat. 2349) is amended—

(A) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively; and

12 USC 1817,
1818.

(B) by striking paragraph (1) and inserting the following new paragraphs:

12 USC 1815.

"(1) in section 5(d)(3)(B)(i)—

"(A) by striking 'average assessment base' and inserting 'deposits'; and

"(B) by striking 'shall—' and all that follows through the period and inserting 'shall be treated as deposits which are insured by the Savings Association Insurance Fund.';

"(2) in section 5(d)(3)(B)(ii)—

"(A) by striking 'average assessment base' and inserting 'deposits'; and

"(B) by striking 'shall—' and all that follows through the period and inserting 'shall be treated as deposits which are insured by the Bank Insurance Fund.'".

(7) Effective on the effective date of the amendment made by section 302(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991, section 7(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817(c)) (as amended by such section 302(a)) is amended—

Effective date.

(A) by adding at the end, the paragraph added to such section 7(b) (as in effect on the day before the effective date of such amendment) by section 103(b)(2) of the Federal Deposit Insurance Corporation Improvement Act of 1991; and

(B) by redesignating such paragraph as paragraph (6).

(8) Effective on the effective date of the amendment made by section 302(e)(4) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (as so redesignated by paragraph (6)(A) of this subsection), section 7(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)) (as amended by section 302(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991) is amended by adding after paragraph (6) (as transferred and so redesignated by paragraph (6) of this subsection) the following new paragraph:

Effective date.

"(7) COMMUNITY ENTERPRISE CREDITS.—The Corporation shall allow a credit against any semiannual assessment to any insured depository institution which satisfies the requirements of the Community Enterprise Assessment Credit Board

under section 233(a)(1) of the Bank Enterprise Act of 1991 in the amount determined by such Board by regulation.”

Effective date.

(9) Effective on the effective date of the amendment made by section 302(e)(4) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (as so redesignated by paragraph (3)(A) of this subsection), section 233 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 1834a) is amended—

(A) in subsection (a)(1)(A), by striking “7(d)(4)” and inserting “7(b)(7)”;

(B) in subsection (a)(3), by striking “7(d)(4)” and inserting “7(b)(7)”; and

(C) in subsection (e)(2), by striking “made for purposes of the notification required under section 7(d)(1)(B)” and inserting “of the semiannual assessment to which such credit is applicable”.

50 USC app.
2062 note.

SEC. 304. EFFECTIVE DATE.

This Act and the amendments made by this Act shall be deemed to have become effective on March 1, 1992, except as otherwise specifically provided in this Act.

12 USC 1815
note.

SEC. 305. PROVISIONAL REPEAL OF DUPLICATIVE PROVISIONS.

In the event of the enactment of H.R. 5334 (An Act to amend and extend certain laws relating to housing and community development, and for other purposes), the following provisions of that Act, and the amendments made by such provisions, are repealed, effective on the date of enactment of this Act:

(1) Section 1603(a)(3) of such Act.

(2) Section 1604(a)(11) of such Act.

(3) Paragraphs (1), (2), and (3) of section 1604(b) of such Act.

(3) Paragraphs (2) through (7) of section 1605(a) of such Act.

Approved October 28, 1992.

LEGISLATIVE HISTORY—S. 347 (H.R. 3039):

HOUSE REPORTS: No. 102-208, Pt. 1 (Comm. on Banking, Finance and Urban Affairs) and Pt. 2 (Comm. on Armed Services), both accompanying H.R. 3039, and No. 102-1028 (Comm. of Conference).

CONGRESSIONAL RECORD:

Vol. 137 (1991): Feb. 21, considered and passed Senate.

Oct. 2, H.R. 3039 considered and passed House.

Oct. 10, S. 347 considered and passed House, amended, in lieu of H.R. 3039.

Vol. 138 (1992): Oct. 5, House agreed to conference report.

Oct. 8, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 28 (1992):

Oct. 28, Presidential statement.